

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF RIVER FALLS

Requesting a Declaratory Ruling Pursuant to Sec.
111.70(4)(b), Stats., Involving a Dispute Between Said
Petitioner and

RIVER FALLS PROFESSIONAL POLICE
ASSOCIATION, LOCAL 207 OF THE LABOR
ASSOCIATION OF WISCONSIN, INC.

Case 30
No. 54718 DR(M)-582
Decision No. 29009

Appearances:

Bye, Goff & Rohde, Ltd., by Mr. Steven B. Goff, Attorney at Law, 258 Riverside Drive,
River Falls, Wisconsin, 54022-0167, for the City.

Mr. Thomas A. Bauer, Labor Consultant, Labor Association of Wisconsin, Inc., 206 South
Arlington Street, Appleton, Wisconsin, 54915, for the Association.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

On December 6, 1996, the City of River Falls filed a petition with the Wisconsin Employment Relations Commission pursuant to Sec. 111.70(4)(b), Stats., seeking a declaratory ruling that it did not have a duty to bargain with the River Falls Professional Police Association, Local 207 of the Labor Association of Wisconsin, Inc., over certain matters.

On December 16, 1996, Labor Association of Wisconsin, Inc., and its affiliated Local 207, River Falls Professional Police Association filed a response to the petition.

The parties waived hearing and filed written argument, the last of which was received on February 10, 1997. Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

No. 29009

1. The City of River Falls, herein the City, is a municipal employer having its principal offices at 123 East Elm Street, River Falls, Wisconsin, 54022.

2. The Labor Association of Wisconsin, Inc., and the River Falls Professional Police Association, herein the Association, is a labor organization having its principal offices at 206 South Arlington Street, Appleton, Wisconsin, 54915. The Association is the collective bargaining representative for full-time sworn police officers employed by the City.

3. The City and the Association are bargaining a contract covering the officers represented by the Association. The City asserts that it does not have an obligation to bargain with the Association over the following proposal:

ARTICLE XXVI - General Provisions

...

26.3 All employees who live within the City limits of River Falls shall be picked up and dropped off at their residence for any department required activities, including regular work shifts, court, training, etc.

4. The proposal set forth in Finding of Fact 3 primarily relates to the formulation of public policy and the management and direction of the City Police Department.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The proposal set forth in Finding of Fact 3 is permissive subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DECLARATORY RULING 1/

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a

No. 29009

(Footnote 1 continues on page 3)

petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing.

The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(Footnote 1 continues on page 4)

1. The City of River Falls does not have a duty to bargain within the meaning of Secs. 111.70(1)(a) and (3)(a)4, Stats., over the proposal set forth in Finding of Fact 3 with the Labor Association of Wisconsin, Inc., and the River Falls Professional Police Association.

Given under our hands and seal at the City of Madison, Wisconsin,
this 25th day of February 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

(Footnote 1 continued from page 3)

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

No. 29009

CITY OF RIVER FALLS

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

BACKGROUND

It is useful to set forth the general legal framework within which the issues herein must be resolved. In Beloit Education Association v. WERC, 73 Wis. 2d 43 (1976), United School District No. 1 of Racine County v. WERC, 81 Wis. 2d 89 (1977), and City of Brookfield v. WERC, 87 Wis. 2d 819 (1979), the Court set forth the definition of mandatory and permissive subjects of bargaining under Sec. 111.70(1)(d), Stats., as matters which primarily relate to "wages, hours, and conditions of employment" or to the "formulation or management of public policy," respectively.

As the Court noted in West Bend Education Association v. WERC, 121 Wis. 2d, 1, 9, (1984),

As applied on a case-by-case basis, this primarily related standard is a balancing test which recognizes that the municipal employer, the employees, and the public have significant interests at stake and that their competing interests should be weighted to determine whether a proposed subject for bargaining should be characterized as mandatory. If the employees' legitimate interest in wages, hours, and conditions of employment outweighs the employer's concerns about the restriction on managerial prerogatives or public policy, the proposal is a mandatory subject of bargaining. In contrast, where the management and direction of the school system or the formulation of public policy predominates, the matter is not a mandatory subject of bargaining.

DISCUSSION

The parties agree that for many years, on-duty patrol officers have picked up and taken home other patrol officers who live in the City for the beginning and end of their work shifts and also for court appearances and training. The City has advised the Association that it wishes to discontinue the practice. The Association responded with the bargaining proposal set forth in Finding 3 which the City, in turn, asserts is a permissive subject of bargaining.

We think it apparent that the proposal does have a relationship to employee wages, hours, and conditions of employment. The practice is a form of compensation for the affected employees.

However, it is equally apparent that the proposal has a relationship to policy determinations by the City as to how and where law enforcement resources are to be allocated and the related

No. 29009

question of how employees' work days should be spent. The practice dictates how and where on-duty officers will spend a portion of their shift, and thus prevents the City from determining that it wishes to allocate its law enforcement resources in a different manner.

On balance, we are persuaded the proposal primarily relates to the formulation of public policy and the related issue of the management and direction of the Police Department. We have consistently held that an employer is not obligated to bargain over how the work day is allocated because of the policy and management ramifications of that choice. 2/ The practice in question dictates a law enforcement resource allocation of the work day which allows the rides to and from work to occur. The practice's intrusion into employer prerogatives regarding resource allocation 3/ warrants finding the practice to be a permissive subject of bargaining. However, the impact of the end of the practice on employee wages, hours, and conditions of employment is a mandatory subject of bargaining.

Given under our hands and seal at the City of Madison, Wisconsin,
this 25th day of February 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

2/ Oak Creek-Franklin School District, Dec. No. 11827-B (WERC, 9/74); Milwaukee Board of School Directors, Dec. No. 20093-A (WERC, 2/83).

3/ In City of New Berlin, Dec. No. 19185 (WERC, 12/81) and City of Milwaukee, Dec. No. 27997 (WERC, 3/94), we applied this doctrine in law enforcement settings. In Milwaukee, we noted that if a work day allocation choice has significant employee safety impact, allocation issues can become a mandatory subject of bargaining. There are no significant safety issues present here. No. 29009.